IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

WP(C).No. 32610 of 2007(F)

PETITIONERS:

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1. MUHAMMEDALI, S/O.KUNHAMMUTTY, AGED 37, NEELUKAVIL HOUSE, PERINTALMANNA P.O., DISTRICT MALAPPURAM.

2. SMT.SHAMEEMA, D/O.MUHAMMED, PULAKKAL HOUSE, PERINTALMANNA, MALAPPURAM.

3. SAIDALI, S/O.KUNHAYAMU, NEELUKAVIL HOUSE, PERINTALMANNA, MALAPPURAM.

4. ABDULLA, S/O.ABOO HAJI, MUTHUVARATHODY HOUSE, PERINTALMANNA, MALAPPURAM.

5. ABDUL SALIM, S/O.MAMMU, PERINTALMANNA, MALAPPURAM.

6. RADHAKRISHNAN, S/O.BALAKRISHNAN, NOTTAMKANDATHIL HOUSE, PERINTHALMANNA, MALAPPURAM.(ALL THE PETITIONERS ARE REPRESENTED BY HAREESH M.S., S/O.GIRIJA KUMARI, 'HARISREE', PERINTALMANNA, MALAPPURAM).

BY ADV. SRI.K.M.SATHYANATHA MENON
SMT.S.SMITHA (PARAKKAL)

RESPONDENTS:

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1. THE SECRETARY TO GOVERNMENT , TOWN PLANNING, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. PERINTALMANNA MUNICIPALITY REPRESENTED BY THE SECRETARY, PERINTALMANNA.

3. CHIEF TOWN PLANNER, THIRUVANANTHAPURAM.

4. THE TOWN PLANNING OFFICER,
MALAPPURAM, MALAPPURAM DIST.

5. ASST. EXECUTIVE ENGINEER, ROAD DIVISION,
PERINTALMANNA, MALAPPURAM DISTRICT.

R2 BY ADV. SRI.P.K.VIJAYAMOHANAN
SRI.VIJAYA MOHNAN
R1, R3 TO R5 BY GOVERNMENT PLEADER, SRI.K.J. MUHAMMED ANZAR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 32610 OF 2007

Dated this the 11th day of December, 2007

JUDGMENT

The grievance of the petitioners is that their application for building permit for construction of a commercial complex within the area of the 1st respondent Municipality has been rejected by the Secretary of the Municipality on the ground that as per the DTP scheme the area where the building is proposed to be constructed is included in the proposed 24 metre PWD Bypass road. What is stated is that presently the road is having only 12 metre width and if the proposed Bypass road has become reality, the petitioner's land also will be necessary. Concededly, till this moment no notification under Section 4(1) of the Land Acquisition Act is promulgated for acquisition of any portion of the petitioner's property. It appears to me that the Municipality is yet to request the Government for acquisition. Under these circumstances, the principles laid down by this Court in **Raju Jethmalani & others v. State of Maharashtra & others** [(2005) 11 SCC 222] and by the Division Bench of this Court in **Padmini v. State of Kerala** [1999 (3) KLT 465] will rule. Accordingly, I dispose of the Writ Petition issuing the following directions:

Petitioners are directed to file an affidavit undertaking that in the

event of a notification under Section 4(1) of the Land Acquisition Act for acquisition of any portion of their property being promulgated within a period of one year from today, they will not claim any compensation for the building to be put up by them on the strength of the permit to be issued to them. Once such an affidavit is filed, the Municipality will reconsider the plan submitted by the petitioners for construction of the commercial building and pass fresh orders. If the plan is otherwise in order, they will grant that application and issue permit. In other words, existence of the proposal to have a 24 meter wide road as per the DTP scheme, will not be a reason for rejecting the plan. Ext.P2 is quashed for enabling the Municipality to reconsider the petitioners' plan. It is made clear that even after the expiry of one year in the event of any genuine public purpose it will be open to the Municipality to acquire the property in question. Under such an event the petitioners will be entitled for adequate compensation not only for the land but also for the building to be constructed by them.

PIUS C. KURIAKOSE, JUDGE

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